

# EXHIBIT B

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK**

JOSEPH KENT,

Plaintiff,

V.

POOLTOGETHER, INC.; LEIGHTON  
CUSACK; KAIN WARWICK;  
STANISLAV KULECHOV;  
DRAGONFLY CAPITAL, LLC;  
NASCENT US, LLC; MAVEN 11  
CAPITAL, BV; GALAXY DIGITAL  
CAPITAL MANAGEMENT, LP;  
PARAFI CAPITAL, LP; and  
COMPOUND LABS, INC.,

Defendant.

Case No. 1:21-CV-6025-FB-CLP  
CLASS ACTION

## DECLARATION OF BRENNAN BILBERRY

1. My name is Brennan Bilberry. I am a resident of Washington, D.C. I am over 18 years of age.

2. I work at Fairmark Partners, LLP, the law firm that represents Joseph Kent in this Action. My previous research experience includes work overseeing political and corporate investigations at the Democratic Congressional Campaign Committee, a leading Super PAC in the 2012 presidential election, and numerous federal and state elections.

3. In September and October 2021, I reviewed corporate records and SEC filings made by Leighton Cusack. On an October 2019 Statement and Designation by Foreign Corporation filed with the California Secretary of State signed by Cusack, he indicated an address in Grand Rapids, Michigan as the “Business Address” of PoolTogether, Inc. In a September 2020 Securities and Exchange Commission filing signed by Cusack, he indicated the same address in Grand Rapids as the “Principal Place of Business” of PoolTogether Inc. Using public records, I concluded the address appears to be a residential address owned by a trust controlled by Cusack’s mother. Using public records, social media, and statements from Cusack in media interviews, I also concluded that Cusack appeared to live and work in New York City during the period of those filings.

4. On October 15, 2021, I transferred cryptocurrency to a wallet with the goal of testing the PoolTogether deposit process and checking for the presence of terms and conditions. On the same day, I linked the wallet to PoolTogether by scanning the QR code that I found on [app.pooltogether.com](https://app.pooltogether.com). During this process I

was specifically looking for terms of service, terms and conditions, or similar types of disclosures. I did not see any terms of service, terms and conditions, disclosures, or hyperlinks to any of those or similar things, during the entire process of linking a wallet to PoolTogether.

5. Furthermore, I went through the process of attempting to deliver cryptocurrency to PoolTogether several times from October 15 to October 21. During this process, I was still specifically looking for terms of service, terms and conditions, disclosures, or hyperlinks to any of those or similar things, and did not see any.

6. After receiving communication from opposing counsel on December 16, 2021, counsel for Kent in the above-captioned matter asked that I attempt to connect a wallet to [app.pooltogether.com](https://app.pooltogether.com). I attempted the process of manually disconnecting and reconnecting a wallet and attempting to deposit several times on December 16, 2022 and the days following and found that terms and conditions were now visible when one initially connects a wallet. But no terms were presented either upon returning to the website or upon deposit. During these tests, my wallet remained connected even after I left the site and returned hours or days later.

7. On December 17, 2021, I became aware that counsel for PoolTogether stated that PoolTogether added terms and conditions to its website on the afternoon of October 21, 2021 that appear when a user deposits. In the days following, I attempted deposits to PoolTogether via its website and found no terms and conditions at the time of deposit.

8. On the evening of December 22, 2021, I became aware that counsel for PoolTogether now stated that terms and conditions were presented when a user connects or reconnects a wallet and that users are generally required to reconnect a wallet after leaving and returning to the website. On December 23, 2021 and the days following, I returned to the website several times and found that my wallet was still connected each time unless I manually disconnected it. Furthermore, I reviewed publicly available videos on YouTube showing users navigating to the site to find their wallet still connected. Similarly, on May 4, 2022, after reviewing PoolTogether's Motion to Compel Arbitration, I navigated to [app.pooltogether.com](https://app.pooltogether.com) to find my wallet still connected after not having visited in the site in several weeks. Earlier today, on May 17, 2022, I navigated to [app.pooltogether.com](https://app.pooltogether.com) and found my wallet still connected.

9. On December 23, 2021, I manually disconnected my wallet, visited other websites and then returned to [app.pooltogether.com](https://app.pooltogether.com) and connected my wallet. Upon this initial wallet connect, I was presented with terms and conditions. I then navigated away from [app.pooltogether.com](https://app.pooltogether.com), visited several other websites (google.com, news websites, Wikipedia, etc.) and returned to [app.pooltogether.com](https://app.pooltogether.com). My wallet was still connected to the website and I was presented with no terms and conditions. I then went through the process of depositing cryptocurrency into PoolTogether and was presented with no terms and conditions during the deposit process. Upon clicking to confirm the deposit, I was presented with the error message: "Failed to complete. Unknown Ethereum address."

10. From December 2021 to May 2022, I documented instances of users experiencing the same error and reporting the error to Leighton Cusack on a PoolTogether discussion board. In one instance, a user found their wallet automatically connected to PoolTogether even after they had manually disconnected it at Cusack's direction. In another, a user found that disconnecting and reconnecting a wallet did not solve the error, but clearing cookies from their browser did.

11. Counsel provided me copies of all correspondence and I, working with Rucha Desai, an attorney at Fairmark Partners, reproduced them below without alteration.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that this declaration was executed on May 19, 2022.

/s/ Brennan Bilberry  
Brennan Bilberry